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EXAMINER

BRAHAN, THOMAS J

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/047,523

Applicant(s)

COHN ET AL.

Examiner

Thomas J. Brahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. The finality of the previous office action is withdrawn in view of the new objections and new rejections which follow.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Claim 15 refers to a "reciprocating assembly" which is not discussed in the specification. It appears from the use of the term within the claim, that the lifting arm assemblies (26a and 26b) are being confused with a reciprocating assembly. The term "reciprocate" is defined as back and forth movement. It is common in these types of wheel chair lifts to have the means which moves a deck (such as applicant's deck 24) to and from its storage location on the vehicle as a reciprocating means. The movement of the lift arm assemblies would be a lifting movement and not a reciprocating movement. Appropriate correction is required. No new matter may be entered.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because the same reference numerals are used for similar, but not identical elements within the different embodiments. For example, the reference numerals 26a, 30a, and 32a are used to designate the upper and lower arms of all the embodiments, even though their structures are different in the third embodiment, see figure 6. It also appears as though the pin structures of figure 7 vary from the pins of the other embodiments. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheets should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 4, 8, 14, and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 4, 8, 14, and 18 are specific to the embodiment of figure 6 which has the support device located at end of the attachment arm assemblies. It is unclear as to how this embodiment protects the system from pin failures. If one of the four connection pins fail, the lift platform falls. This embodiment does not include an additional link (with additional pins) to provide the

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parallelogram lifting linkage with a redundant safety link.

6. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

7. Claims 1-23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example:

a. In claim 1, lines 4 and 5, the limitation “the lift platform being held in a substantially horizontal first plane as the lift platform is moved between at least the raised and lowered positions” appears to be inaccurate. If the platform is being raised and lowered it cannot be held in a single horizontal plane. Claims 11 and 15 have the same limitation which has the lift platform held in a single horizontal plane.

b. In claim 1, line 7, the limitation “the support device supporting one of the first and second lift arm assemblies” does not appear to be accurate as the smaller link (20) does not “support” the larger links (support arm 30a and the balance arm 32b). The use of the term “support” becomes even more of a stretch in lines 7 and 8 of claim 15, which has one of the smaller links as supporting the entire “reciprocating assembly” which would have it as supporting both arm assemblies (26a and 26b) and the torsion tube (27). Claim 11 has a similar limitation in line 7.

c. In the last three lines of claim 1, the limitation “the support device supporting one of the first and second attachment arm assemblies and maintaining the lift platform in a second plane substantially parallel to the first plane if at least a portion the other of the first and second attachment arm assemblies fails” appears to be inaccurate. The support device (20) prevents dropping movements of the lift platform upon failure of a pin in the *same* arm assembly (26a and 26b) as it maintains the integrity of parallelogram arrangement for its own support arm assembly, not for the *other* arm assembly, see page 7, lines 5-20 of the specification.

d. In the last two lines of claim 1, the limitation “maintaining the lift platform in a second plane substantially parallel to the first plane” is not true for all three of the disclosed embodiments. As the support devices (20 and 220) are redundant links of the parallelogram linkage of the attachment arm assembly, they would prevent all dropping movements of the lift platform upon failure of a pin and the lift platform should be in substantially the same plane, not a second plane. Only the support device (120) is designed otherwise. Therefore it is unclear as to how claim 1 can be considered as generic to all three embodiments. The last two lines of claim 15 have a similar limitation with movement of the platform.

e. It is unclear as to how claim 3 can recite that the support device has a second bracket on the second arm assembly, as this would contradict the function recited in claim 1 of “maintaining the lift

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platform in a second plane substantially parallel to the first plane if at least a portion the other of the first and second attachment arm assemblies fails". The device cannot be defined as being both brackets when its function is recited as supporting a portion of "the other arm". There is no "other arm".

f. Claim 7 is confusing as it can be interpreted in two completely different manners. It can be interpreted as reciting a single bracket which is pinned to both attachment arm assemblies, or it can be interpreted as reciting a pair of brackets, one on each of the attachment arm assemblies. As both interpretations are reasonable, the scope of the claim is unclear.

g. In a manner similar to the section (g) above, it is unclear as to how claim 7 can recite that the support device comprises a U-shaped bracket pinned to each attachment arm assembly, as this contradicts claim 1 which has it supporting one arm and maintaining the lift platform in position upon failure of the other arm. If the device is mounted on both arms, there is no "other arm" or third arm.

h. In claim 9, the term "the upper and lower arms" lacks clear antecedent basis in the claims. Note that claim 7 states that the bracket is "pinned to one of an upper or lower arm of each of the first and the second attachment arm assemblies" which does not provide clear antecedent basis for the arms due the inclusion of the phrase "one of" in the limitation.

i. In claim 15, the use of the term "reciprocating" is awkward and inaccurate. In this art the wheel chair lifts have a reciprocating platform (such as applicant's platform 24) with movements to and from the vehicle which are clearly reciprocating movements. To denote the raising and lowering movements of the lift platform (28) as reciprocating would be confused with this conventional reciprocating movement, and would not correspond to the common definition of the term "reciprocating".

j. In claim 15, line 8, the term "reciprocating assembly" should be "said reciprocating assembly" to indicate that it is the same reciprocating assembly of line 3.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. Claims 1-3, 5, 11, 12, 15-17, 21 and 22, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Nilson. Nilson shows a lift assembly comprising:

(a) first and second attachment arm assemblies (24, 29) extending between a reciprocating platform (20) and a lift platform (26), the lift platform movable between at least a raised position and a lowered position; and

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(b) a support device (32) coupled to one of the first and second attachment arm assemblies, the support device supporting one of the first and second attachment arm assemblies (to the same degree that applicants link 20 supports the larger support and balance arms) and maintaining the lift platform in a second plane substantially parallel to the first plane if at least a portion the other of the first and second attachment arm assemblies fails (again, as the limitation is best understood, as applicant's support link 20 is designed more to support its own arm assembly than the distant arm assembly; note that the extra link 32 would inherently maintain the integrity of the parallelogram linkage upon failure of some of the parts of an arm assembly).

The intended use of the lift platform, as a wheelchair lift, is not given any patentable weight, as this limitation is found only in the preambles of the claims, and as Nilson has all of the structures recited in the bodies of the claims and could lift wheelchairs. The lift platform of Nilson is held in substantially parallel horizontal planes as the lift platform is moved between at least the raised and lowered positions, as it believed to be applicant's intent with the limitations referring to a single horizontal plane. The support device (32) is a bracket between upper and lower arms (29 and 24; depending upon the position of lift platform 26), as recited in claims 2, 12, and 16. There is a second support device (32) in the form of a second bracket on the other upper and lower arms, as the structural limitations of claim 3 are best correlated with the functional limitation at the end of claim 1. The brackets are located between the ends of the upper and lower arms, as claim 5 is best understood, and as recited in claims 17 and 21.

10. Claims 1-23, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Bianchini. Bianchini shows a lift assembly comprising:

(a) first and second attachment arm assemblies (the right and left halves of the support frame shown in figure 1) extending between a reciprocating platform (of the vehicle, note the term reciprocating is broad and reads on back and forth movements) and a lift platform (tray 80), the lift platform movable between at least a raised position and a lowered position, the lift platform being held in a first horizontal plane and substantially parallel horizontal planes as the lift platform is moved between the raised and lowered positions (as this is what is believed to be applicant's intend with the limitation of a single horizontal first plane); and

(b) a support device (catch 88) coupled to one of the first and second attachment arm assemblies (note the term coupled is broad and does not require direct attachment; also the support device is coupled to the arm assemblies when the platform is locked in the raised position), the support device supporting one of the first and second attachment arm assemblies and maintaining the lift platform in a second plane substantially parallel to the first plane if at least a portion the other of the first and second attachment arm assemblies fails.

The intended use of the lift platform, as a wheelchair lift, is not given any patentable weight, as this limitation is found only in the preambles of the claims, and as Bianchini has all of the structures recited in the bodies of the claims, and could lift a wheelchair. Note these type of lifts are also used to carry folded wheelchairs. The support device (88) is a bracket extending between an upper arm (16; note that no parallelogram feature is specified in the claims for these arms) and a lower arm (50), as recited in claims 2, 12, 16, and 22. There are two

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brackets (88), as recited in claims 3 and 17. The support device is located at the upper end area of the arm attachment assemblies, as to be considered as at one of their ends, as recited in claims 4, 8 and 18. As the support device is not at the exact end of the arm attachment assemblies, it can also be considered as between the ends, as recited in claims 5, and 10. The support device comprises a U-shaped first bracket (88) pinned to an upper arm (16) of the arm attachment assembly, as recited in claims 6, 13, 19 and 23. The support device comprises two U-shaped brackets (88) each pinned to an upper arm (16) of an arm attachment assembly, as recited in claims 7 and 20. The support device (88) is attached to both the upper arms (16) and the lower arms (50), indirectly attached at all times, or directly attached when the catch locks the platform in the raised position, as recited in claim 10.

11. Claims 1, 2, 6, 11-16, 18, 19, and 21-23, as best understood, are rejected under 35 U.S.C. § 102(e) as being anticipated by Klinkenberg. Klinkenberg shows a lift assembly comprising: (a) first and second attachment arm assemblies (21) extending between a reciprocating platform (20; the whole vehicle reciprocates as broadly recited in claims) and a lift platform (54), the lift platform movable between at least a raised position and a lowered position; and (b) a support device (lock 80) coupled to one of the first and second attachment arm assemblies, the support device supporting one of the first and second attachment arm assemblies and maintaining the lift platform in a second plane substantially parallel to the first plane(s) if at least a portion the other of the first and second attachment arm assemblies fails (the lift cylinder; note that the claims do not specify when the failure may occur). The intended use of the lift platform, as a wheelchair lift, is not given any patentable weight, as this limitation is found only in the preambles of the claims, and as Klinkenberg has all of the structures recited in the bodies of the claims. The lift platform of Klinkenberg is held in substantially parallel horizontal planes as the lift platform is moved between at least the raised and lowered positions, as it believed to be applicant's intent with the limitations referring to a single horizontal plane. The support device (80) is a bracket between upper and lower arms (26 and 28), as recited in claims 2, 12, 16, and 21. The support device has a hook portion, as to comprise a U-shaped bracket pinned to an upper arm of, as recited in claims 6, 13, 19 and 23. The support device (lock 80) has a lower portion at the end of the attachment arm assemblies, see figure 6, as recited in claims 14 and 18.

12. Claims 1-19 and 21-23, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Garate. Garate shows a lift assembly comprising (a) first and second attachment arm assemblies (32, 33) extending between a reciprocating platform (10 and 11; the whole vehicle reciprocates as broadly recited in claims) and a lift platform (50), the lift platform movable between at least a raised position and a lowered position, and (b) a support device (120) coupled to one of the first and second attachment arm assemblies, the support device supporting one of the first and second attachment arm assemblies and maintaining the lift platform in a second plane substantially parallel to the first plane(s) if at least a portion the other of the first and second attachment arm assemblies fails. The intended use of the lift platform, as a wheelchair lift, is not given any patentable weight, as this limitation is found only in the preambles of the claims, and as Garate has all of the


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structures recited in the bodies of the claims. The lift platform of Garate is held in substantially parallel horizontal planes as the lift platform is moved between at least the raised and lowered positions, as it believed to be applicant's intent with the limitations referring to a single horizontal plane. The support device (120) is a bracket extending between an upper arm (32 and 33) and lower arms (85 and 86; note that the arms are never claimed as part of parallelogram linkage), as recited in claims 2, 9, 12 and 16. There are two such brackets (121 and 122) as recited in claims 3 and 17. The support device is far enough off of the center of the upper arms (32 and 33) as to be at the ends of the attachment arms, as recited in claims 4, 8, 14, 18 and 22. The support device is not at the extreme ends of lower attachment arms (85 and 86), as to be considered as between the ends, as recited in claims 5 and 10. The support device (120-122) forms a U-shaped bracket pinned to lower arms (85, 86), as recited in claims 6, 7, 13, 19 and 23.

13. Allsop et al is cited as showing a various embodiments of lifting platforms with locking brackets.

14. Applicant argues in the appeal brief filed July 2, 2004 that there is "no teaching or suggestion within Nilson of either a need or desire to include supports whether it is a U-shaped bracket or any other type of support device" as to modify Nilson. However, as detailed above, Nilson reads on the broadest of the claims as the extra links in its parallelogram lifting linkage would inherently support the lifting platform should a pin fail. The fact that Nilson refers to these redundant links as stiffening links does not detract from its showing of linkage with a geometry similar to the geometry of applicant's linkage, as to behave in the same manner. In view of applicant's arguments, the rejections including modifying Nilson have been withdrawn. The late recitation of the new references is regretted.

15. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (703) 308-2568. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (703) 308-3248. The fax number for all patent applications is (703) 872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 11/2/04  
Thomas J. Brahan  
Primary Examiner  
Art Unit 3652